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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/587,317

07/26/2006

Jorg Jahm

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EXAMINER

BLANKENSHIP, GREGORY A

ART UNIT

PAPER NUMBER

3612

MAIL DATE

DELIVERY MODE

07/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/587,317

Applicant(s)

JAHN ET AL.

Examiner

GREGORY BLANKENSHIP

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on election filed 4/29/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-46 is/are pending in the application.
- 4a) Of the above claim(s) 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-28, 30, 31, 34-38 and 41-46 is/are rejected.
- 7) ☒ Claim(s) 29, 32, 33 and 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/26/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species A in the reply filed on 4/29/2009 is acknowledged.
2. Claim 40 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/29/2009.

Specification

3. The disclosure is objected to because of the following informalities:
Page 1, line 6, says the invention is a soft top convertible while page 11, line 6, says the invention is a hard top convertible. Please clarify.
Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 31 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 is not clearly understood because it depends from canceled claim 23. It is believed that the claim should depend from claim 30 because it references the position detection sensor that is introduced in claim 30.

Claim 38 is not clearly understood because the phrase, "substantially before or during or after", is confusing because it appears to mean anytime making the limitation meaningless.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 24, 27, 28, 30, 31, 35, 36, 38, 41, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Tokarz (5,772,274).

Tokarz discloses a convertible top system for a convertible vehicle having a vehicle body, as shown in Figures 1 and 9. The system has a plurality of pivotable external top elements (23,81,91,109,111) including foldable roof elements (23). The external top elements have pivot joints (63,113,115) for pivotal connections between at least some top elements and the vehicle body, as shown in Figures 1 and 7-9. At least one roof element (23) is pivotally connected to the vehicle body with at least one of the pivot joints (63). Two electric motors (31,35) pivot the roof elements with respect to one another and the vehicle body by providing torque directly into one of the pivot joints (63), as shown in Figure 2. The pivot joint (63) can be controlled separately from the pivot joint that connects the top element (91) to the vehicle. In reference to claim 27, it is inherent that some of the pivot joints are made of the same construction because the construction is the same for right side elements and left side elements of the top system. In reference to claim 28, one of the pivot joints is driven by means of a transmission device (33,55) arranged between a lever (81) associated with a first external element and a lever (91) of a second external element, as shown in Figure 2. In reference to claims 30 and 31, a potentiometer (551) is arranged at one of the pivot joints (63), as shown in Figure 2. A striker (53) is provided in the transmission device

of the joint such that it is coaxially to a pivot axle of the joint, as shown in Figures 2 and 3.

The potentiometer is disposed on the striker, as shown in Figure 2. In reference to claim 35, the pivotal connection between the top elements and the vehicle body are formed by at least one controllable pivot joint and by at least one passive pivot joint. Since the claim does not define a controllable pivot joint or a passive pivot joint, the terms do not narrow the broad term of pivot joint. Therefore, any pivot joint is capable of being a controlled or a passive pivot joint. An axle is an inherent feature of the pivot joints shown in Figure 1. In reference to claim 38, the foldable roof elements (23) is formed a front roof element, a middle roof element, and a rear roof element that are connected together. The three elements form the claimed S-shape by pivoting in the claimed manner when the roof is moved between a closed to a stored position, as shown in Figure 9. The pivoting of the front roof element takes place during pivoting of the middle and rear roof elements, as shown in Figures 9-11. In reference to claim 41, the top external elements include a storage well cover (135) that pivots upwardly in an opening movement of the roof, as shown in Figure 8, and pivots downwardly into a horizontal position when the roof elements are stowed, as shown in Figure 7. In reference to claim 42, at least one external element is a top storage well cover (135) which can be raised from a closed position, Figure 7, at least at one edge by pivoting means of at least one drivable pivot joint and at least one associated drive around an oppositely disposed edge, as shown in Figure 8.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the

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subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokarz (5,772,274) in view of Hacker (4,749,193).

Tokarz discloses a plurality of pivot joints that are oppositely disposed with respect to the longitudinal axis of the vehicle since the structure is mirrored about the longitudinal axis of the vehicle. However, Tokarz does not disclose a flexible shaft interconnecting the electric motor with two joints.

Hacker teaches using flexible shafts (7,8) to interconnect the electric motor (9,10) with two convertible top elements (5,6), as shown in Figure 1.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to interconnect the electric motor and two joints of Tokarz using a flexible shafts, as taught by Hacker, to directly introduce drive torque into each joint to provide different packaging of the convertible top by allowing the motor to be placed in a different position while still providing torque in the same location.

10. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tokarz (5,772,274).

Tokarz does not disclose a motor associated with each joint.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an electric motor associated at each joint of Tokarz to reduce the load on each motor to extend the life of the motor or to minimize the size of each motor.

11. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tokarz (5,772,274) in view of Hacker (4,749,193).

Tokarz does not disclose the control unit connected by a data bus to a central control unit.

Hacker teaches connecting a central control unit (87) to individual control units by a data bus (81), as shown in Figure 5.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to connect each control unit of Tokarz to a central control unit by a data bus, as taught by Hacker, to better coordinate the movement and control of each top element.

12. Claims 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokarz (5,772,274) in view of Queveau et al. (7,377,573).

Tokarz does not disclose the specific linkage.

Queveau teaches a top storage well cover (1) with at least one drivable pivot (17) that is engaged by a linkage (9). The linkage is pivotally connected to the vehicle at one end and is pivotally connected to the cover (1) at a region in the longitudinal direction of the vehicle spaced away from a pivot axle (10a), as shown in Figure 2. The linkage is formed from two mutually connected levers (11,12) having different lengths. In reference to claim 44, the cover can be latched in its closed position by pivoting the linkage into a dead-center position, as shown in Figure 1. In reference to claim 45, the drivable pivot joint can inherently be driven manually in an emergency situation. This can be accomplished by disconnecting the drive unit from the linkage and then rotating the cover. In reference to claim 46, the cover is fixed to the vehicle body at the edge associated with its pivot axle (10a) by means of at least one passive joint.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to pivotally connect the top storage well cover of Tokarz with a linkage system, as taught by Queveau, to provide a specific system to move the top storage well cover in the described manner.

Allowable Subject Matter

13. Claims 29, 32, 33, and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY BLANKENSHIP whose telephone number is (571)272-6656. The examiner can normally be reached on 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Greg Blankenship/
Examiner, Art Unit 3612
July 20, 2009